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SEP 15 2004

OFFICE OF PETITIONS

In re Application of :
Marvin L. Boerboom :
Application No. 10/804,589 :
Filed: March 19, 2004 : ON PETITION
Attorney Docket Number: :
DEKA:327US :

This is a decision on the Petition Under 37 CFR § 1.53(e)(2) to Accord a Filing Date and Response to Notice of Incomplete Nonprovisional Application Filed Under 37 CFR 1.53(b), filed August 12, 2004, requesting the above-identified application be accorded a filing date of March 19, 2004.

The petition is granted.

The application was filed on March 19, 2004. On June 9, 2004, the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application (hereinafter "Notice"), informing Applicant that the application had NOT been accorded a filing date because the application had been deposited without drawings.

Applicant responds with the instant petition and avers that drawings are not required [under 35 U.S.C. §113] because they are not necessary for the understanding or for practice of the invention as claimed.

A review of the file reveals that Petitioner is correct, the specification contains process claims (i.e. claims 15-17). As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This application contains process (and method) claims; therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In applications filed without all of the drawing figure(s) referred to in the specification, the MPEP § 601.01(g) states that a "Notice of Omitted Item(s)" is mailed indicating that the application has been accorded a filing date, but is lacking some of the figures of drawings described in the specification.

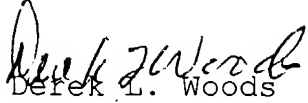
In this instance, a petition is not necessary to add the drawing figures. Applicants may add figure(s) described in the specification on the basis that the drawings are not new matter. New drawings may be entered by the primary examiner without a petition so long as the drawings contain no new matter. See, MPEP § 608.02(a).

In view of the above, the Notice mailed June 9, 2004, was mailed in error and is hereby withdrawn.

This application is being forwarded to the Office of Initial Patent Examination, Customer Corrections, for further processing, including processing of the Response to Notice of Incomplete Nonprovisional Application Filed Under 37 CFR 1.53(b), with the filing date of March 19, 2004, and an indication that no drawings were required or present on filing.

A refund of the petition fee has been credited to deposit account 50-1212 as authorized in the instant petition.

Telephone inquiries concerning this matter should be directed to
Petitions Attorney Derek L. Woods at (703) 305-0014.

A handwritten signature in black ink, appearing to read "Derek L. Woods", is written over the printed name.

Derek L. Woods
Petitions Attorney
Office of Petitions